

ORAL ARGUMENT NOT YET SCHEDULED  
No. 18-3052

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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IN RE: GRAND JURY INVESTIGATION

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ANDREW MILLER,

*Appellant,*

v.

UNITED STATES OF AMERICA,

*Appellee.*

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*On Appeal from the United States District Court  
For the District of Columbia  
Grand Jury Action No. 18-GJ-34 (BAH)*

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**PRELIMINARY STATEMENT OF THE ISSUES**

Pursuant to the Order of this Court on August 15, 2018, Appellant (Miller) hereby submits his Preliminary Statement of the Issues:

1. Whether Congress, under the Appointments Clause of Article II, § 2, of the U.S. Constitution, “established by law” the appointment of a private attorney to serve as a special counsel as an “Officer of the United States.”

2. Whether Special Counsel Robert C. Mueller III (the “Special Counsel”) was unconstitutionally appointed because he is a “principal officer” under the Appointments Clause of Article II, and thus was required to be—but was not—appointed by the President with the Advice and Consent of the Senate.

3. Whether Congress “by Law vest[ed] the Appointment” of the Special Counsel as an “inferior Officer [ ]” in “Head of the [Justice] Department[ ],” and thus, under the “Excepting Clause,” was unconstitutionally appointed because he was required to be—but was not—appointed by Attorney General Jeff Sessions rather than by Deputy Attorney General Rod Rosenstein.

Respectfully submitted,

Date: August 30, 2018

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